

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT KENNY,

Plaintiff,

v.

PACIFIC INVESTMENT
MANAGEMENT COMPANY LLC, a
Delaware limited liability company;
PIMCO INVESTMENTS LLC,

Defendants.

No. CV 14-1987-RSM

**STIPULATION AND [PROPOSED]
ORDER AMENDING ORDER SETTING
TRIAL DATE AND RELATED DATES
AND DEADLINES IN JOINT STATUS
REPORT AND DISCOVERY PLAN**

NOTE FOR MOTION: September 30, 2016

Plaintiff Robert Kenny (“Plaintiff”) and Defendants Pacific Investment Management Company LLC and PIMCO Investments LLC (collectively, “Defendants”), through their undersigned counsel of record, hereby stipulate and agree as follows:

On September 6, 2016, the parties filed with the Court the Joint Status Report and Discovery Plan (Dkt. 98), wherein the parties reported that additional time was necessary to complete the expanded discovery obligations arising from recent Court orders and to respond to ongoing discovery requests. This stipulation and proposed order follows the status report by specifying certain proposed revised deadlines for completion of various discovery activities.

1 Although the parties have sought to complete fact discovery as expeditiously as possible
 2 and continue to work diligently to this end, in light of the overall volume, ongoing discovery
 3 requests, and recent Court orders, Defendants' document review and production have become
 4 larger in scope than previously anticipated, rendering an extension of the previously ordered
 5 deadlines necessary.
 6
 7
 8
 9

10 In addition to requests for production of documents¹ and interrogatories propounded by
 11 Plaintiff in the normal course of discovery, Plaintiff requests additional discovery based on the
 12 Court's recent Order Granting Plaintiff's Motion for Judgment on the Pleadings in this matter
 13 (Dkt. 97). The order held that "Section 36(b) of the ICA contains only a retrospective
 14 limitation on damages and [] Plaintiff need not file Anniversary Complaints annually to
 15 preserve his right to pursue damages incurred after the filing of this action" and has the effect
 16 of extending the timeframe at issue in this matter. As a result, Plaintiff has requested
 17 production of documents from the later time period newly encompassed by this matter, which
 18 necessarily compels Defendants to conduct an additional collection, review, and production of
 19 documents.
 20
 21
 22
 23
 24
 25
 26
 27
 28
 29

30 The Court also granted in part Plaintiff's motion to compel discovery on August 5, 2016
 31 (Dkt. 96). This order required further discovery on several issues, which will require additional
 32 time by Defendants and Defendants' counsel to identify and produce responsive documents.
 33 While Defendants have already provided a portion of the responsive documents to Plaintiff, the
 34 parties continue to confer over the scope of certain categories of documents contemplated by
 35 the order.
 36
 37
 38
 39
 40
 41
 42

43 Additionally, as a result of ongoing discovery disputes between Plaintiff and the
 44 Independent Trustees of the PIMCO Total Return Fund (*see* Pls. Mot. to Compel Trustees, Dkt.
 45
 46
 47
 48
 49
 50
 51

¹ Defendants are currently responding to Plaintiff's Fourth Request for Production of Documents, in addition to addressing follow-up discovery requests flowing from the First, Second, and Third Requests for Production of Documents and Plaintiff's First Set of Interrogatories.

100), the parties have delayed taking the depositions of several witnesses until the dispute is resolved by the Court.

When all of the above circumstances are considered, Defendants expect their document production to be substantially complete by March 31, 2017. This date for substantial completion of production of documents is nine months later than the June 30, 2016 target for substantial completion of document discovery memorialized in the parties' April 27, 2016 stipulation to a revised discovery plan.

Accordingly, in light of the additional nine months Defendants believe will be necessary to substantially complete production of documents in response to Plaintiff's document requests,

IT IS HEREBY STIPULATED, by and among Plaintiff and Defendants, for good cause shown, that the deadlines and dates reflected in the Court's Order Setting Trial Date and Related Dates (Dkt. 51) and the parties' Stipulation and Order Amending Trial Date and Related Dates and Deadlines in Joint Status Report and Discovery Plan (Dkt. 56) be extended by approximately nine months, as proposed below, subject to the Court's approval:

Event in Order Setting Trial Date and Related Dates	Current Deadline	Revised Deadline
Jury Trial Date	09/19/2017	06/19/2018
Disclosure of expert testimony under FRCP 26(a)(2)	03/17/2017	12/01/2017
All motions related to discovery must be noted on the motion calendar no later than the Friday before discovery closes pursuant to CR7(d)(3) and CR7(a)(2)(B)	05/12/2017	02/09/2018
Discovery completed by	05/19/2017	02/16/2018
All dispositive motions must be filed by and noted on the motion calendar no later than the fourth Friday thereafter (see CR7(d))	06/16/2017	03/16/2018

Mediation per CR 39.1(c)(3) held no later than	07/28/2017	04/27/2018
All motions in limine must be filed by and noted on the motion calendar no later than the THIRD Friday thereafter	08/18/2017	05/18/2018
Agreed pretrial order due	09/01/2017	05/18/2018
Trial briefs, proposed voir dire questions, jury instructions, neutral statement of the case, and trial exhibits due	09/22/2017	06/01/2018
Event in Joint Status Report and Discovery Plan	Current Deadline	Revised Deadline
Document discovery shall be substantially completed on or before	06/30/2016	03/31/2017
Fact discovery shall be completed on or before	10/28/2016	07/28/2017
Expert discovery shall commence promptly upon the closure of fact discovery and shall be completed on or before	05/19/2017	02/16/2018
Plaintiff shall designate any expert witnesses and serve each expert's written report pursuant to Fed. R. Civ. P. 26(a)(2)(B) on or before	12/02/2016	09/15/2017
Defendants shall designate any expert witnesses and serve each expert's report pursuant to Fed. R. Civ. P. 26(a)(2)(B) on or before	02/03/2017	11/03/2017
Plaintiffs shall serve any rebuttal expert reports from previously-designated experts on or before	03/03/2017	12/01/2017
Expert depositions shall be completed by	05/19/2017	02/16/2018

Dated: this 30th day of September, 2016.

By: s/ Michael D. Woerner
 By: s/ Tana Lin
 By: s/ Laura R. Gerber
 By: s/ Ian Mensher
 Michael D. Woerner, WSBA No. 15452
 Tana Lin, WSBA No. 35271
 Laura R. Gerber, WSBA No. 34981
 Ian Mensher, WSBA #39593
Keller Rohrback L.L.P.
 1201 Third Avenue, Suite 3200
 Seattle, WA 98101
 Telephone: 206-623-1900
 Facsimile: 206-623-3384
 Email: mwoerner@kellerrohrback.com
 tlin@kellerrohrback.com
 lgerber@kellerrohrback.com
 imensher@kellerrohrback.com

Michael J. Brickman (*Admitted Pro Hac Vice*)
Richardson, Patrick, Westbrook & Brickman, LLC
 174 East Bay Street
 Charleston, SC 29401
 Telephone: 843-727-6520
 Facsimile: 843-727-3103
 Email: mbrickman@rpwb.com

Nina Fields Britt (*Admitted Pro Hac Vice*)
 James C. Bradley (*Admitted Pro Hac Vice*)
 Matthew A. Nickles (*Admitted Pro Hac Vice*)
Richardson, Patrick, Westbrook & Brickman, LLC
 1037 Chuck Dawley Boulevard, Bldg. A
 Mount Pleasant, SC 29465
 Telephone: 843-727-6500
 Facsimile: 843-216-6509
 Email: nfields@rpwb.com
 jbradley@rpwb.com
 mnickles@rpwb.com

Attorneys for Plaintiff

By: s/ Ronald L. Berenstein
 s/ David F. Taylor
 s/ Sean C. Knowles
 Ronald L. Berenstein, WSBA No. 7573
 David F. Taylor, WSBA No. 25689
 Sean C. Knowles, WSBA No. 39893
Perkins Coie LLP
 1201 Third Avenue, Suite 4900
 Seattle, WA 98101-3099
 Telephone: 206-359-8000
 Facsimile: 206-359-9000
 Email: rberenstein@perkinscoie.com
 dftaylor@perkinscoie.com
 sknowles@perkinscoie.com

John D. Donovan (*Admitted Pro Hac Vice*)
 Robert A. Skinner (*Admitted Pro Hac Vice*)
 Amy D. Roy (*Admitted Pro Hac Vice*)
Ropes & Gray
 Prudential Tower
 800 Boylston Street
 Boston, MA 02199-3600
 Telephone: 617-951-7000
 Facsimile: 617-951-7050
 Email: john.donovan@ropesgray.com
 robert.skinner@ropesgray.com
 amy.roy@ropesgray.com

John C. Ertman (*Admitted Pro Hac Vice*)
Ropes & Gray
 1211 Avenue of the Americas
 New York, NY 10036-8704
 Telephone: 212-596-9000
 Facsimile: 212-596-9090
 Email: john.ertman@ropesgray.com

Attorneys for Defendants Pacific Investment Management Company LLC and PIMCO Investments LLC

[PROPOSED] ORDER

Pursuant to stipulation by the parties, and for good cause shown, **IT IS SO ORDERED**
this _____ day of _____, 2016.

Hon. Ricardo S. Martinez
United States District Judge

Presented by:

By: s/ Michael D. Woerner
By: s/ Tana Lin
By: s/ Laura R. Gerber
By: s/ Ian Mensher
Michael D. Woerner, WSBA No. 15452
Tana Lin, WSBA No. 35271
Laura R. Gerber, WSBA No. 34981
Ian Mensher, WSBA #39593
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: 206-623-1900
Facsimile: 206-623-3384
Email: mwoerner@kellerrohrback.com
tlin@kellerrohrback.com
lgerber@kellerrohrback.com
imensher@kellerrohrback.com

By: s/ Ronald L. Berenstein
s/ David F. Taylor
s/ Sean C. Knowles
Ronald L. Berenstein, WSBA No. 7573
David F. Taylor, WSBA No. 25689
Sean C. Knowles, WSBA No. 39893
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206-359-8000
Facsimile: 206-359-9000
Email: rberenstein@perkinscoie.com
dftaylor@perkinscoie.com
sknowles@perkinscoie.com

Michael J. Brickman (*Admitted Pro Hac Vice*)
Richardson, Patrick, Westbrook & Brickman, LLC
174 East Bay Street
Charleston, SC 29401
Telephone: 843-727-6520
Facsimile: 843-727-3103
Email: mbrickman@rpwb.com

John D. Donovan (*Admitted Pro Hac Vice*)
Robert A. Skinner (*Admitted Pro Hac Vice*)
Amy D. Roy (*Admitted Pro Hac Vice*)
Ropes & Gray
Prudential Tower
800 Boylston Street
Boston, MA 02199-3600
Telephone: 617-951-7000
Facsimile: 617-951-7050
Email: john.donovan@ropesgray.com
robert.skinner@ropesgray.com
amy.roy@ropesgray.com

1
2 Nina Fields Britt (*Admitted Pro Hac Vice*)
3 James C. Bradley (*Admitted Pro Hac Vice*)
4 Matthew A. Nickles (*Admitted Pro Hac Vice*)
5 **Richardson, Patrick, Westbrook &**
6 **Brickman, LLC**
7 1037 Chuck Dawley Boulevard, Bldg. A
8 Mount Pleasant, SC 29465
9 Telephone: 843-727-6500
10 Facsimile: 843-216-6509
11 Email: nfields@rpwb.com
12 jbradley@rpwb.com
13 mnickles@rpwb.com
14

15 *Attorneys for Plaintiff*
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

John C. Ertman (*Admitted Pro Hac Vice*)
Ropes & Gray
1211 Avenue of the Americas
New York, NY 10036-8704
Telephone: 212-596-9000
Facsimile: 212-596-9090
Email: john.ertman@ropesgray.com

*Attorneys for Defendants Pacific Investment
Management Company LLC and PIMCO
Investments LLC*

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses indicated on the Court's Electronic Mail Notice List.

DATED: September 30, 2016.

By: s/ Ronald L. Berenstein

Ronald L. Berenstein, WSBA No. 7573

Perkins Coie LLP

1201 Third Avenue, Suite 4900

Seattle, WA 98101-3099

Telephone: 206.359.8000

Facsimile: 206.359.9000

Email: rberenstein@perkinscoie.com

*Attorneys for Defendants Pacific Investment
Management Company LLC and PIMCO
Investments LLC*